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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,742	10/17/2003	Yixin Diao	YOR920030504US1	2816

7590 06/22/2007  
Ryan, Mason & Lewis, LLP  
90 Forest Avenue  
Locust Valley, NY 11560

EXAMINER
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ZHE, MENG YAO

ART UNIT	PAPER NUMBER
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2109

MAIL DATE	DELIVERY MODE
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06/22/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/688,742

Applicant(s)

DIAO ET AL.

Examiner

MengYao Zhe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 to 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 to 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 1/2/07.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

This is the initial Office Action based on the 10/688742 application filed on 10/17/2003.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1 to 28** are rejected under 35 U.S.C. 102(b) as being anticipated by Freund Patent No. 6,076,174 (hereafter Freund).

**As per claim 1, 17, 27, 28, Freund teaches a method of generically controlling one or more resources associated with at least one computing system, comprising the steps of:**

**evaluating one or more performance metrics associated with the one or more resources given one or more configurations of the one or more resources; (Column 1 lines 55 to Column 2, lines 15: computers and network used for jobs are all examples of resources)**

**causing a change in the one or more configurations of the one or more resources based on the performance metric evaluating step; (Column 2, lines 1 to 25: scheduling is changed for each computer based on performance history. When scheduling is changed, resource is either being used or not used for a particular task.)**

**wherein the one or more performance metrics and the one or more configurations are expressed in generic formats. (Column 3, lines 10 to 30)**

**As per claim 2, 18, Freund teaches the method of claim 1, wherein the one or more resources are at least one of real resources and virtual resources. (Column 1 lines 55 to Column 2, lines 15: computer used is one of the resources)**

**As per claim 3, 19, Freund teaches the method of claim 1, wherein the step of evaluating the one or more generically-expressed performance metrics further comprises determining whether one or more performance goals are being met based on the one or more generically-expressed performance metrics. (Column 3, lines 20 to 45, Column 4, lines 1 to 7, lines 40 to 50: Performance characteristics contains elements for evaluation such as cost, constraints, these corresponds to goals that the scheduler needs to meet when developing scheduling strategies.)**

**As per claim 4, 20, Freund teaches the method of claim 1, further comprising the step of obtaining the one or more generically-expressed performance metrics from a probe. (Column 2, lines 1 to 10: Performance characteristic database corresponds to a probe)**

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**As per claim 5, Freund teaches the method of claim 4, wherein the probe measures performance of the one or more resources in the context of a particular workload. (Column 3, lines 20 to 55)**

**As per claim 6, Freund teaches the method of claim 5, wherein the particular workload is a current workload. (Column 4, lines 4 to 35: *The network performance is constantly monitored by the Administrator interface; it is the most current.*)**

**As per claim 7, 21, Freund teaches the method of claim 1, further comprising the step of obtaining the one or more generically-expressed performance metrics via one or more measurements of at least a part of an end user performance experience. (Column 3, lines 1 to 5, Column 4, lines 60 to 65)**

**As per claim 8, 22, Freund teaches the method of claim 1, further comprising the step of obtaining the one or more generically-expressed configurations associated with the one or more resources prior to changing a configuration. (Column 4, lines 7 to 27: *prediction based on history occurs before scheduling occurs.*)**

**As per claim 9, Freund teaches the method of claim 8, further comprising the step of categorizing the one or more obtained, generically-expressed configurations. (Column 4, lines 40 to 40: *different categories for different scheduling strategies.*)**

**As per claim 10, 23, Freund teaches the method of claim 1, wherein the step of causing a change in the one or more generically-expressed configurations further comprises building a model for use in determining changes in the one or more**

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**generically-expressed configurations.** *(Column 4, lines 40 to 50: The scheduling strategies corresponds to a model.)*

**As per claim 11, Freund teaches the method of claim 10, wherein the model building step comprises using at least one of a previous performance history and a previous configuration.** *(Column 2, lines 1 to 15)*

**As per claim 12, Freund teaches the method of claim 11, wherein the model building step further comprises obtaining performance samples associated with the one or more resources and their one or more current configurations.** *(Column 4, lines 28 to 40: The administrator monitors the overall performance.)*

**As per claim 13, 24, Freund teaches the method of claim 1, wherein the step of causing a change in the one or more generically-expressed configurations further comprises instructing the one or more resources to change one or more configurations associated therewith.** *(Column 4, lines 14 to 27: The scheduler ultimately gives each computer a task to perform, using its resources.)*

**As per claim 14, 25, Freund teaches the method of claim 1, further comprising the step of storing the one or more changed, generically-expressed configurations.** *(Column 4, lines 13 to 22: Scheduling keeps updating the schedules, keeping track of what resource is running what task.)*

**As per claim 15, 26, Freund teaches the method of claim 1, wherein the one or more performance metrics and the one or more configurations are expressed in**

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**generic formats in accordance with one or more common generic interfaces.**

*(Column 3, lines 20 to 50, Column 2, lines 9 to 15)*

**As per claim 16, Freund teaches the method of claim 15, wherein a common generic interface comprises a Common Interface Model. *(Column 2, lines 9 to 15)***

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to MengYao Zhe whose telephone number is 571-272-6946. The examiner can normally be reached on Monday Through Friday, 7:30 - 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Del Sole can be reached on 571-272-1130. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M.Z.

  
JOSEPH DEL SOLE  
SUPERVISORY PATENT EXAMINER  
6/19/07